

Guidance notes regarding Intermediary Service Vehicles

There are two parts to these guidance notes:

- Part one provides guidance to enable taxpayers to identify when the Intermediary Service Vehicles (“ISV”) rules apply
- Part two provides guidance on how the ISV rules operate and the taxation implications

The ISV rules were introduced in the 2013 Budget via Income Tax (Amendment No. 41) (Jersey) Law 1961. The relevant legislation is contained in Arts 77A-77E of the Income Tax (Jersey) Law 1961.

These notes are for guidance only and do not affect a person’s right of appeal on any point concerning a liability to tax.

The Comptroller is willing to give advice relating to any scenarios or circumstances that are not covered in these guidance notes, provided that the approach to the Comptroller is made on a “named basis” and all relevant facts are fully disclosed.

Contents

Introduction

Part One: how to identify when the ISV rules apply

Part Two: how the ISV rules operate and the taxation implications

Introduction

The ISV rules introduce a new case of Schedule D income: Case IIA. Case IIA facilitates the taxation of 'attributable earnings'. The ISV rules apply in circumstances where an individual is effectively disguising employment income via the use of their own personal company (ISVs are sometimes referred to as 'personal service companies').

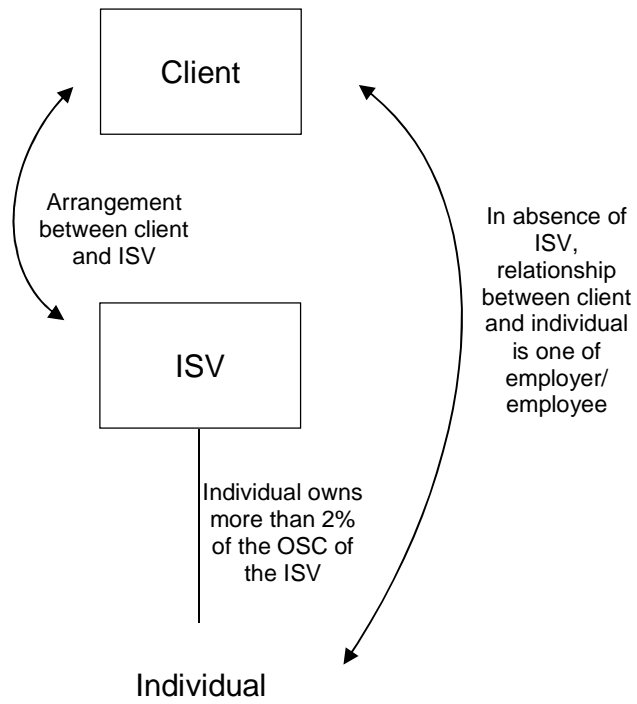
'Attributable earnings' are subject to income tax in the same manner as ordinary employment income.

Broadly the ISV rules apply where a client pays for the services of an individual, but those services are provided through a personal company. Therefore the client pays that company, as opposed to the individual, for the provision of the individual's services. The key question in seeking to determine whether the ISV rules apply is: if the company were not in existence, would the relationship between the individual and the client would be that of employer/employee?

The rules apply in respect of payments made on or after 1 January 2013 onwards, the company's financial period is irrelevant to this analysis.

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The situation in which the ISV rules will most frequently apply is as follows:



Part One: how to identify when the ISV rules apply

Any individual who provides their services through a company is obliged to consider whether the ISV rules apply to them, on a contract-by-contract basis, and to complete their personal tax return accordingly.

Ownership requirement

The ISV rules only apply to individuals who:

- own more than 2% of the ordinary share capital of the ISV; or
- are connected with an individual who owns more than 2% of the ordinary share capital of the ISV

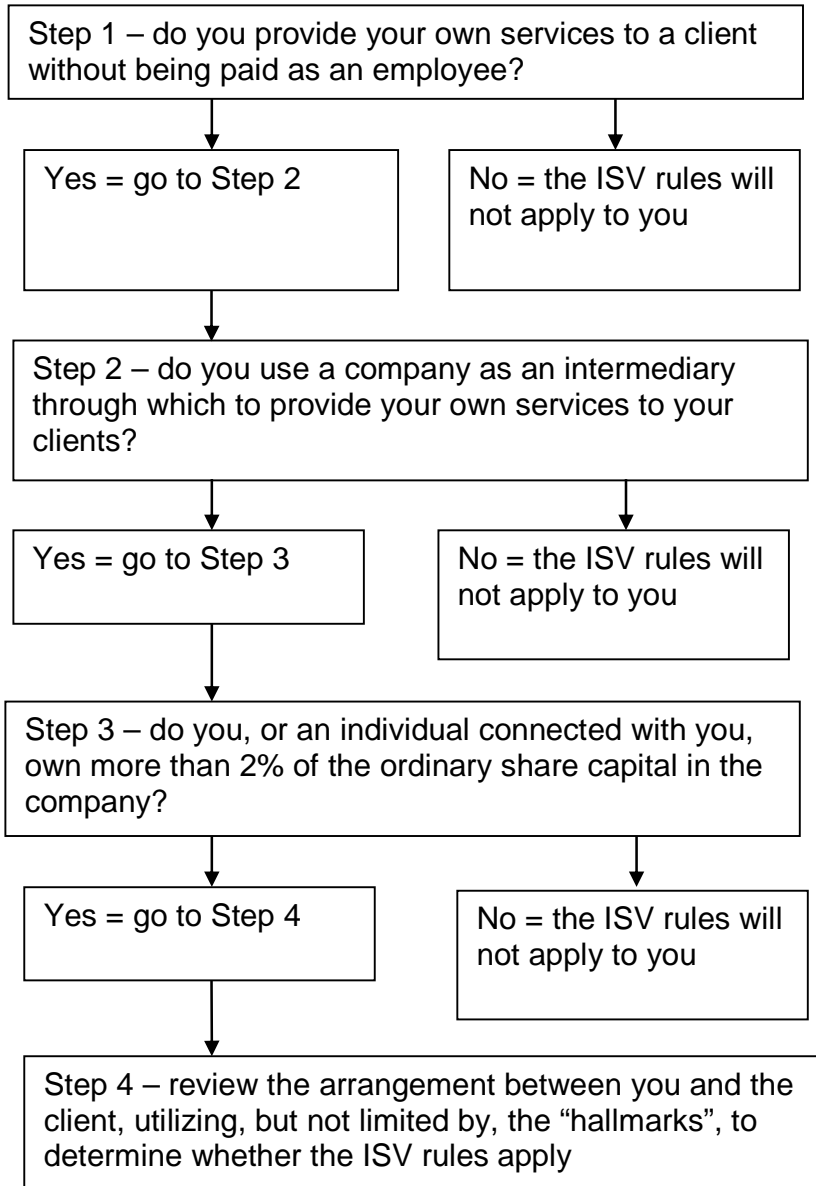
Arrangement requirement

The ISV rules only apply where there is an arrangement between the client and the ISV under which the services of the individual will be supplied to the client. Furthermore a payment must be made from the client to the ISV pursuant to that arrangement.

Employer/employee relationship requirement

The ISV rules only apply where, if the ISV were disregarded and the arrangement had taken the form of a contract between the individual and the client, the relationship between the individual and the client would be that of employer/employee. The analysis of this relationship between the individual and the client is critical and depends on the facts of the particular case taken as a whole. Further guidance relating to this analysis is provided below.

Below is a summary of the steps to follow to ascertain whether the ISV rules apply.



Analysis of relationship between individual and client

It is not possible to exhaustively define the 'employer/employee' relationship within the Income Tax Law. Therefore when determining whether an employer/employee relationship exists, taxpayers are obliged to refer to Article 1A of the Employment (Jersey) Law 2003 which states:

Article 1A "Employer" and "employee"

(1) In this Law –

- (a) "employer" means a person who employs another person; and
- (b) "employee" means a person who is employed by an employer.

(2) For the purposes of paragraph (1), a person is employed by another person if the first person works for the second person under a contract of service or apprenticeship with the second person.

(3) For the purposes of paragraph (1), a person is also employed by another person if the first person enters into any other contract with the second person under which –

- (a) the first person undertakes to do, or to perform personally, work or services for the second person; and
- (b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person.

(4) It is immaterial whether a contract to which paragraph (2) or paragraph (3) refers is express or implied.

(5) If the contract is express, it is immaterial whether it is oral or in writing

The taxpayer must consider all aspects of the arrangement and determine whether their particular circumstances are such that in substance, even if not by written contract, there is an employer/employee relationship in place.

Below is a list of “hallmarks” to assist taxpayers to identify whether an employer/employee relationship exists. These are not weighted. Furthermore this is not a checklist under which a certain number of the criteria need to be met. In self-assessing their status, a taxpayer must consider the arrangement as a whole and hence, when completing the analysis, should not be limited to these hallmarks if there are other relevant factors.

Hallmarks

The following “hallmarks” represent factors that *suggest* the company is **not** an ISV

1. Business Premises & Equipment

Consideration:

- Your company uses (owned or rented) premises that are separate from your own home and your client’s premises.
- Your company provides its own equipment.

2. Insurance

Consideration:

- You have, and there is a requirement to have, separate insurance.

3. Control of work

Consideration:

- You have the opportunity to control your own workload and increase efficiency. An example could be where you finished a project for your client early – but would still get paid the fee as arranged, regardless of the fact you may then go onto work on a different project.
- You generally issue fees upon completion of a project.

- You have the authority to provide extra workers to accelerate a project so that you can move onto a new project.

4. Staff

Consideration:

- Your company employs staff (who are not company directors or shareholders) but who bring in a significant amount of your annual turnover.

5. Advertising/marketing

Consideration:

- Your company spends an appropriate amount on external advertising and marketing.

6. Business plan and independent financial management

Consideration:

- Your company has a business plan with a cash flow forecast.
- Your company has its own bank accounts/financial records.

7. Correct errors at own expense

Consideration:

- Your company would be obliged to correct errors at its own cost.
- Your contractual arrangements with your clients refer to this.

8. Financial risk regarding payment

Consideration:

- You have suffered instances where fees have been unpaid.

9. Invoicing

Consideration:

- Your company regularly issues invoices in respect of fees for services provided.
- Your company negotiates the terms of payment.

10. Substitution

Consideration:

- Your company can substitute its workers.
- Your contractual arrangements with your clients refer to this.
- Your company has responsibility for the substitute's performance.
- Your company's clients do not have the power to veto such substitution.
- Your company pays the substitute for his services.

11. Staff

Consideration:

- Your company has hired somebody, within the last year, to provide services in place of the majority shareholder.
- Your company has the right to sub-contract.

*The following 'hallmark' represents a factor that suggests the company **is** an ISV*

12. Prior arrangements/'employee' rights

Consideration:

- Employees of the company (directors or otherwise) were previously been employed by the client.
- Your company's client provides 'employee' rights such as sick pay, holiday, pension contributions, etc

It is the taxpayer's responsibility to determine whether an employer/employee relationship exists and complete their personal tax return accordingly.

It is anticipated that in most situations the analysis applicable to an arrangement will be clear, however if a taxpayer is unsure of the analysis applicable they should contact the Comptroller with full details of all the relevant facts for guidance.

Small attributable earnings exemption

To ease the compliance burden, the ISV rules do not apply to an individual unless the aggregate of all payments made in relation to that individual to one or more ISVs in any year of assessment exceeds £45,000.

Part Two: how the ISV rules operate and the taxation implications

The ISV rules operate to ensure that individuals who utilise an ISV are subject to tax on their attributable earnings in the same manner as an employee is subject to tax on their employment income.

The amount of the payments made by the client to the ISV for the services of the individual are treated as attributable earnings. This amount is reduced by:

- any payment of salary made by the ISV to the individual in the same year of assessment; and
- any associated employer social security contributions made in the same year of assessment; and
- any other payment made by the ISV which, if the payment had been made by the individual, the individual would have been permitted to deduct against their earned income

The amount charged to tax under these rules is not doubly counted as Sch D Case III or Case IX income.

EXAMPLE 1:

- John Smith owns more than 2% of the ordinary share capital of Grand Themes Ltd
 - Grand Themes Ltd contracts with their client, XYZ Ltd, to provide John Smith's services to XYZ Ltd for the period June to December 2013
 - XYZ Ltd pays Grand Themes Ltd £60,000 for these services
 - Grand Themes Ltd does not remunerate John Smith for his services in 2013
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- John Smith has £60,000 attributable earnings in the 2013 year of assessment

EXAMPLE 2:

- John Smith owns more than 2% of the ordinary share capital of Grand Themes Ltd
- Grand Themes Ltd contracts with their client, XYZ Ltd, to provide John Smith's services to XYZ Ltd for the period June to December 2013
- XYZ Ltd remunerates Grand Themes Ltd £60,000 for these services
- Grand Themes Ltd remunerates John Smith for his services in 2013 by paying him £30,000
- In addition Grand Themes Ltd pays professional subscriptions on his behalf

- John Smith has attributable earnings in 2013. The assessable amount is the £60,000 payment for his services less:
 - £30,000 salary paid out to him
 - Grand Theme's employer social security contributions on the £30,000 salary paid
 - Professional subscriptions paid on John Smith's behalf

NOTE:

Grand Themes Ltd should account for the attributable earnings in the same way as earnings (i.e. as an allowable deduction in the calculation of taxable profits/specified profits).